

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ALICIA M. A.,

Plaintiff,

v.

Civil Action No.
5:21-CV-1154 (DEP)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

LAW OFFICES OF
KENNETH HILLER, PLLC
6000 North Bailey Ave, Suite 1A
Amherst, NY 14226

JUSTIN M. GOLDSTEIN, ESQ.
KENNETH R. HILLER, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
OFFICE OF GENERAL COUNSEL
6401 Security Boulevard
Baltimore, MD 21235

VERNON NORWOOD, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the

Commissioner of Social Security (“Commissioner”), pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on December 13, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner’s determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court’s oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

1) Defendant’s motion for judgment on the pleadings is
GRANTED.

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: December 16, 2022
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
ALICIA MARIE A.,

Plaintiff,

vs.

21-CV-1154

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

TRANSCRIPT OF DECISION

held on December 13, 2022 by teleconference

the HONORABLE DAVID E. PEEBLES

United States Magistrate Judge, Presiding

APPEARANCES (by telephone)

For Plaintiff: LAW OFFICE OF KENNETH HILLER, PLLC
600 North Bailey Avenue
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BY: JUSTIN M. GOLDSTEIN, ESQ.

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1 THE COURT: Let me begin by thanking counsel for
2 excellent and, if not, spirited presentations.

3 This is a proceeding brought pursuant to 42, United
4 States Code, Sections 405(g) and 1383(c)(3) by the plaintiff
5 challenging an adverse determination by the Commissioner of
6 Social Security finding that she was not disabled at the
7 relevant times and therefore ineligible for the benefits
8 sought.

9 The background is as follows. Plaintiff was born
10 in January of 1979 and is currently 43 years of age. She was
11 40 years old at the alleged onset of disability on
12 October 17, 2019. She stands 5-foot 1-inch in height and
13 weighs approximately 120 pounds.

14 Plaintiff lives alone in a mobile home in Mexico,
15 New York. She is married but her husband has been
16 incarcerated, or was at the time of the hearing, since 2018.
17 Plaintiff has five children; in February of 2021 they ranged
18 in age from 14 to 23. And although she shares joint custody
19 with the father, the father is the primary custodian and the
20 plaintiff states that she does not see her children.

21 Plaintiff has a high school diploma and attended
22 regular classes while in school. She also underwent a BOCES
23 office/technical program. Plaintiff had a driver's license
24 but it has been suspended as a result of child support
25 issues. Plaintiff is a weekly user of marijuana and a former

1 alcohol abuser.

2 Plaintiff stopped working in December of 2018.
3 After being in the Army, she worked in various positions,
4 including as a drug tester, in retail, and a medical Medicaid
5 transport driver.

6 Physically, plaintiff suffers from several
7 impediments, including cervical spine issues that have been
8 described as disc protrusion, Type 2 diabetes, asthma,
9 headaches, and bilateral wrist issues.

10 Mentally, plaintiff experiences anxiety, bipolar
11 disorder, depression, and alcohol use disorder. She was
12 hospitalized twice in 2016 based upon suicidal ideations, but
13 has not been hospitalized during the relevant period for
14 psychiatric reasons.

15 The records seem to indicate, as defendant's
16 counsel has argued, that plaintiff's psychological conditions
17 are exacerbated by marital issues surrounding her
18 relationship with her husband, and at one time due to the
19 possibility that she suffered from breast cancer. Plaintiff
20 has obtained treatment through various sources, including
21 Liberty Resources, where she sees Nurse Practitioner Joshua
22 Blodgett one time per month, and Licensed Clinical Social
23 Worker Anthony Fazzino weekly. She also sees Dr. Young Seo
24 at Central New York Spine and Pain Medication. She treats at
25 Prime Care Medical Center and Oswego Health.

1 Plaintiff's activities of daily living include the
2 ability to bathe, dress, groom, cook, clean, do laundry, go
3 to the store occasionally, her friend takes her due to the
4 lack of a driver's license, some socialization. She watches
5 television. She plays video games. She reads. She goes on
6 social media. She is able to sometimes mow her lawn but not
7 always, and shovels some snow, although her neighbor helps in
8 that regard.

9 Procedurally, plaintiff applied for Supplemental
10 Security Income Payments, or Title XVI benefits, on April 30,
11 2020, alleging an onset date of October 17, 2019. The record
12 suggests that there are multiple prior denials of Title II
13 disability insurance payment applications, possibly in 2014,
14 2016 and 2019, and those are the dates upon which apparently
15 the Social Security Administration Appeals Council denied
16 review in those cases.

17 A hearing was conducted on February 18, 2021 by
18 Administrative Law Judge Robyn Hoffman who addressed
19 plaintiff's application for benefits. A supplemental hearing
20 with a vocational expert was conducted by ALJ Hoffman on July
21 21, 2021. On August 4, 2021, ALJ Hoffman issued an
22 unfavorable decision which became a final determination of
23 the Agency on September 15, 2021, when the Social Security
24 Administration Appeals Council denied plaintiff's application
25 for review. This action was commenced on October 21, 2021,

1 and is timely.

2 In her decision ALJ Hoffman applied the familiar
3 five-step sequential test for determining disability. She
4 first found that plaintiff had not engaged in substantial
5 gainful activity since April 30, 2020, the date of her Title
6 XVI application.

7 At step two she concluded that plaintiff does
8 suffer from severe impairments that impose more than minimal
9 limitations on her ability to perform work functions,
10 including cervical spine disc protrusion, bipolar disorder,
11 anxiety disorder, and major depressive disorder.

12 At step three ALJ Hoffman concluded that
13 plaintiff's conditions do not meet or equal any of the listed
14 presumptively disabling conditions set forth in the
15 Commissioner's regulations, specifically considering listings
16 1.15, 12.04, 12.06 and 12.15.

17 After reviewing the available evidence in the
18 record, ALJ Hoffman next concluded that notwithstanding her
19 impairments, plaintiff is capable of performing light work as
20 defined in the regulations with limitations both physical and
21 mental. I'll address them in more detail during my analysis
22 of plaintiff's arguments.

23 At step four, applying that RFC determination, ALJ
24 Hoffman concluded that plaintiff did not have any past
25 relevant work to compare and proceeded to step five.

1 Thereafter noting that if plaintiff was capable of performing
2 a full range of light work, a finding of no disability would
3 be compelled by the Medical-Vocational Guidelines, or the
4 so-called grids, set forth in the Commissioner's regulations,
5 specifically Rule 202.20, but concluded that because of the
6 existence of additional limitations, exertional and
7 non-exertional, that would erode the job base upon which the
8 grids are predicated, contacted and consulted with a
9 vocational expert.

10 After posing a hypothetical to the vocational
11 expert that tracked the RFC finding, she concluded based upon
12 the vocational expert's testimony that plaintiff is capable
13 of performing work that is available in the national economy,
14 citing as representative positions those of router, an
15 automatic car wash attendant, and small products assembler,
16 and concluded that plaintiff is, therefore, not disabled.

17 As you know, the Court's function is to determine
18 whether correct, legal principles were applied and the
19 resulting determination is supported by substantial evidence,
20 defined as such relevant evidence as a reasonable mind would
21 find sufficient to support a conclusion.

22 As the Second Circuit has noted, this is an
23 extremely deferential standard that was noted in *Brault*
24 *versus Social Security Administration Commissioner*, 683 F.3d
25 443, from June of 2012, and reiterated in *Schillo v.*

1 *Kijakazi*, 31 F.4th 64, from April 6, 2022. In the *Brault*
2 case the Second Circuit noted significantly that under the
3 standard to be applied, if an ALJ finds a fact, that fact can
4 be rejected only if a reasonable fact-finder would have to
5 conclude otherwise.

6 In this case plaintiff raises three basic
7 arguments. She argues that the residual functional capacity
8 was not supported, attacking both the physical and the mental
9 components. Secondly, she argues that the Administrative Law
10 Judge's analysis of the medical opinions and the record is
11 flawed and inconsistent with the governing regulations. And
12 third, she challenges the analysis of her subjective
13 complaints as not being supported by substantial evidence.

14 Of course, the first task for an Administrative Law
15 Judge is to determine a claimant's RFC, which represents a
16 finding of the range of tasks she is capable of performing
17 notwithstanding her impairments. *Tankizi versus Commissioner*
18 *of Social Security*, 521 F.App'x 29, at 33, Second Circuit
19 2013, and is also addressed in 20 CFR Section 416.945(a).

20 An RFC represents the claimant's maximum ability to
21 perform sustained work activities in an ordinary setting on a
22 regular and continuing basis, meaning eight hours a day for
23 five days a week, or an equivalent schedule. An RFC, of
24 course, is informed by consideration of all relevant medical
25 and other elements and to be upheld must be supported by

1 substantial evidence.

2 In this case the RFC finding turns primarily,
3 although not exclusively, on the medical opinions in the
4 record. Plaintiff challenges, as I indicated, both the
5 physical and mental aspects of the RFC. When medical
6 evidence is assessed by an Administrative Law Judge in cases
7 where applications were filed after March of 2017, the
8 so-called new regulations control. Under those regulations
9 an ALJ no longer defers or gives any specific evidentiary
10 weight, including controlling weight, to any medical opinion
11 or prior administrative medical findings, including from a
12 claimant's medical sources. Instead, the ALJ must consider
13 those opinions using the relevant factors and specifically
14 must address and consider the factors of supportability and
15 consistency of those medical opinions. The ALJ must
16 articulate how persuasive he or she finds each medical
17 opinion and must explain how he or she considered the
18 supportability and consistency of those medical opinions.
19 The other factors must be considered, but the ALJ is not
20 required to explain how he or she considered those factors as
21 appropriate in any particular case.

22 In this case the physical components of the RFC
23 were explained by the Administrative Law Judge at pages 16
24 and 17 of her decision. She based the physical components of
25 the RFC on state prior administrative findings of

1 Dr. Ahmed at 6A and Dr. Saeed at 3A. They are extremely
2 similar. The only difference comes in the ability to climb
3 ladders, ropes, and scaffolds; Dr. Ahmed opined never,
4 Dr. Saeed occasionally, which is consistent with the RFC, and
5 therefore supports it.

6 The ALJ rejected the environmental limitations set
7 forth based upon the fact that she did not find and nor did
8 the doctors find plaintiff's respiratory condition to be
9 severe. The Administrative Law Judge did add greater
10 manipulative limitations to accommodate the carpal tunnel
11 syndrome treatment that plaintiff experienced after the
12 issuance of those prior administrative findings. That error,
13 however, did not harm the plaintiff. The RFC does include
14 manipulative limitations limiting plaintiff to frequently
15 handle, finger, and feel with bilateral hands.

16 The opinions of state agency consultants such as
17 Dr. Ahmed and Dr. Saeed can provide substantial evidence to
18 support an RFC determination. *Woytowicz v. Commissioner of*
19 *Social Security*, 2016 WL 6427787, from the Northern District
20 of New York, October 5, 2016; and *Angela B. versus*
21 *Commissioner of Social Security*, 2020 WL 17247244, from the
22 Western District of New York, November 28, 2022.

23 The staleness argument that the plaintiff has
24 raised, I find no merit. It depends upon evidence that there
25 would have been significant deterioration in plaintiff's

1 condition since the issuance of those opinions. The only
2 change that I could discern concerned the ability to
3 manipulate with the hands. There doesn't appear to be
4 evidence of significant deterioration of plaintiff's cervical
5 condition and the limitations associated with those. So I
6 find that the plaintiff has failed to carry her burden to
7 prove greater physical restrictions than those set forth in
8 the RFC is warranted.

9 Turning to the mental component, the RFC, it should
10 be noted, is extremely limiting. The residual functional
11 capacity limits plaintiff in terms of mental capability as
12 follows. The claimant should work at simple, routine and
13 repetitive tasks. The claimant should work in a low-stress
14 job defined as occasional decision-making, occasional
15 judgment required, and occasional changes in the work
16 setting. The claimant should work at goal-orientated work
17 rather than production pace work. Claimant should have
18 occasional contact with co-workers, supervisors, and the
19 public, but would be able to interact with others
20 sufficiently in order to complete a brief training period
21 running from one to two days up to thirty days. Again,
22 extremely limiting.

23 The mental component is based upon the medical
24 opinions of Dr. Shapiro, and I'll outline these in a minute,
25 to some degree Licensed Clinical Social Worker Fazzino and

1 Nurse Practitioner Blodgett, and somewhat on opinions from
2 state agency consultants Dr. Juriga and Dr. Kamin.

3 The first of those, of course, is Dr. Jeanne
4 Shapiro. Her opinion is dated September 23, 2020, and it
5 appears at 356 to 360 of the record. The medical source
6 statement finds basically no limitations in the ability to
7 understand, remember, or apply simple or complex directions
8 or instructions, or using reason and judgment to make
9 work-related decisions. Dr. Shapiro finds a mild to moderate
10 limitation in plaintiff's ability to interact adequately with
11 supervisors, co-workers, and the public. She finds that
12 plaintiff may be mildly to moderately limited in her ability
13 to sustain concentration and perform a task at a consistent
14 pace depending on her level of anxiety. She further finds
15 that plaintiff is moderately limited in her ability to
16 sustain an ordinary routine and regular attendance at work,
17 and moderately limited in her ability to regulate emotions,
18 control behavior, and maintain well-being.

19 This opinion was discussed by the Administrative
20 Law Judge at page 17 and found to be supported by the medical
21 evidence in the record, including exam findings which show
22 improvement with treatment and provides substantial support
23 for the RFC.

24 The second opinion in the record, there are two,
25 one from Dr. M. Juriga dated October 5, 2020, and from Dr. E.

1 Kamin from October 16, 2020. These are found at Exhibits 3A
2 and 6A, respectively. They find that plaintiff's mental
3 condition is not severe. That's at pages 98 and 112.

4 The ALJ found that those determinations were
5 somewhat consistent with benign evaluations of Dr. Shapiro
6 and other exams, but did not find it to be consistent with
7 plaintiff's need for ongoing mental health treatment. That's
8 discussed at page 17. I find no error. Interestingly, in
9 assessing the so-called B criteria under the step three
10 determination in the regulations, Dr. Kamin found no
11 limitations in plaintiff's ability to understand, remember or
12 apply information, mild limitation in the ability to interact
13 with others, mild limitation in concentration, persistence
14 and pace, and mild limitations on the adapting and managing
15 oneself. Similarly, Dr. Juriga found no limitation in the
16 understanding, remembering, and application of information,
17 mild in interacting with others, mild in concentration,
18 persistence and maintaining pace, and mild in the ability to
19 adapt or manage oneself.

20 And although the findings at step three, the B
21 findings, do not necessarily represent the residual
22 functional capacity or translate in that regard, they do
23 provide support for the ALJ's determination.

24 The other opinions in the record that speak to
25 plaintiff's mental condition, there were two; one is from

1 Nurse Practitioner Joshua Blodgett from January 11, 2021,
2 that appears at 740 and 742 of the Administrative Transcript,
3 and Therapist Anthony Fazzino from December 21, 2020,
4 appearing at 737 to 739 of the Administrative Transcript.
5 They're nearly identical. They're extremely restricting.
6 Nurse Practitioner Blodgett, after reciting the symptoms that
7 plaintiff experiences, found that plaintiff is unable to meet
8 competitive standards in four areas under the category mental
9 abilities and aptitude needed to do unskilled work, and no
10 useful ability to function under that category in eight
11 subcategories.

12 He also found under mental abilities and aptitude
13 needed to do particular types of jobs, that plaintiff is
14 unable to meet competitive standards in three areas, and for
15 explanation stated the following, under the first
16 subcategory: Alicia has limitations in her ability to
17 remember, maintain periods of work function if any at all,
18 trouble with follow through and struggles to manage symptoms
19 consistently. And under the second: Alicia's mental health
20 symptoms interfere with her ability to do or achieve any
21 work-related functions.

22 Therapist Fazzino in his medical source statement
23 found that plaintiff is unable to meet competitive standards
24 in four areas under mental abilities and aptitude needed to
25 do unskilled work and no useful ability to function in eight,

1 stating that plaintiff has attempted in the past but is
2 limited by ability to remember, stay on task, follow through,
3 and manage symptoms effectively. He also found that
4 plaintiff is unable to meet competitive standards in three
5 areas, and seriously limited, but not precluded, in two under
6 mental abilities and aptitude needed to do particular types
7 of jobs.

8 The Administrative Law Judge considered these
9 opinions, found them somewhat persuasive, page 17, but found
10 them to be inconsistent with medical exams. She noted that
11 there are no treatment notes from Therapist Fazzino.
12 Plaintiff argues that this creates an obvious gap in the
13 record that required the Administrative Law Judge to fill.
14 It was noted, however, that there were periodic reviews in
15 the record which show some of Therapist Fazzino's treatment.
16 And I note at page 36 and again at 55, plaintiff's counsel
17 during the two hearings stated that the record was complete.
18 I conclude that there was no obvious gap. And in any event,
19 the argument was waived when counsel stated that the record
20 was complete. *Gilbert H. v. Saul*, 2020 WL 6146596, from the
21 Northern District of New York, October 20, 2020.

22 The record in my view is adequate for the decision,
23 for the Administration Law Judge's decision. There are
24 mental health findings of not only Nurse Practitioner
25 Blodgett, but several other treatment providers of the

1 plaintiff. And plaintiff has failed to show how obtaining
2 Therapist Fazzino's notes would have changed the result.
3 *Reices-Colon versus Astrue*, 523 F.App'x 796, from the Second
4 Circuit, May 2nd, 2013.

5 I have reviewed carefully plaintiff's treatment
6 records in the Administrative Transcript. There are
7 treatment records from several providers, including Prime
8 Care Medical Center where she saw Nurse Practitioner
9 Cassandra Hunsberger; Central New York Spine and Pain
10 Medicine, LLC, Dr. Young Seo primarily; Oswego Health where
11 plaintiff saw several nurse practitioners and appears to be
12 perhaps her primary health provider; Oswego Hospital; Liberty
13 Resources, including Therapist Fazzino and Nurse Practitioner
14 Blodgett, and Crouse Medical Practice Neurology.

15 A careful review of those records reveals that they
16 consistently show primarily a lack of significant
17 psychological issues. Typical of many entries is one from
18 Central New York Spine and Pain, at 346: Plaintiff awake and
19 oriented, normal ST, short term, and LT, long term, memory,
20 normal mood and affect. That's from May of 2020. Oswego
21 Hospital note, normal affect at 598, 630 and 460. From
22 Liberty, Nurse Practitioner Blodgett, at 659, affect full and
23 congruent, judgment, insight unremarkable. And that's
24 typical of several other notations from CNY Spine. Typical
25 is denies anxiety, depression and suicidal ideation. That's

1 at 730 from November 16, 2020. From Oswego, at 772 and 791,
2 grossly oriented to person, time and place, judgment, insight
3 and memory intact, normal mood, appropriate affect. And
4 these are typical of many, many, many entries in the
5 plaintiff's treatment records. I recognize that some of
6 these are from providers that were of plaintiff's physical
7 condition, but nonetheless, they are observations that the
8 Administrative Law Judge is entitled to take into
9 consideration.

10 The medical evidence, including especially
11 Dr. Shapiro, provides adequate support for the RFC, including
12 the limitations in concentration, persistence and pace, which
13 are entirely consistent with simple work, goal-oriented.
14 Dr. Shapiro's opinion is consistent with the limited mental
15 aspect of the RFC. *Diakogiannis v. Astrue*, 975 F.Supp. 2d,
16 299, from the Western District of New York, September 30,
17 2013. *Tamara M. versus Saul*, 2021 WL 1198359 from the
18 Northern District of New York, March 30, 2021. And see also
19 *Lander v. Colvin*, 2016 WL 1211283, from the Western District
20 of New York, and that is from March 29, 2016.

21 The issue of contact, the probationary period
22 contact is included in the RFC. It is supported for the most
23 part by Dr. Shapiro who found moderate, mild to moderate
24 limitation. Moderate limitation is consistent with frequent
25 in terms of the meaning of the term in Dr. Shapiro's report,

1 and this is consistent with *Sharon R. v. Kijakazi*, 2021 WL
2 3884257, from the Northern District of New York, August 31,
3 2021. It is also supported in -- *Sharon R.* cites also to
4 another case that is supportive, *Jodi B. v. Commissioner of*
5 *Social Security*, 2021 WL 3682736, from the Western District
6 of New York, August 19, 2021.

7 In my view, Dr. Shapiro and the vocational expert
8 together support the additional interaction with supervisors
9 and co-workers during the probationary period.

10 So, in sum, I find that the residual functional
11 capacity is supported by substantial evidence and the
12 Administrative Law Judge correctly assessed the medical
13 opinions in the record.

14 The last argument surrounds evaluation of the
15 plaintiff's symptoms, what we used to call credibility. An
16 ALJ obviously must take into account subjective complaints of
17 a plaintiff in making his or her step five disability
18 analysis, but is not required to unquestionably accept any
19 subjective testimony by a claimant. Rather, the RFC, the ALJ
20 retains the discretion to evaluate the claimant's subjective
21 testimony, including testimony concerning pain or otherwise;
22 *Mimms v. Heckler*, 750 F.3d 180, at 185 to 186, Second
23 Circuit, 1984. In deciding how to exercise that discretion,
24 the ALJ must consider a variety of factors which would
25 ordinarily inform the question of credibility in any context,

1 including the plaintiff's believability, his or her
2 motivation, and the medical evidence in the record. In doing
3 so, an ALJ must reach an independent judgment concerning the
4 actual extent of limitations suffered by the plaintiff and
5 its impact on her ability to perform work functions.
6 Notably, an ALJ's determination as to a claimant's subjective
7 complaint is entitled to considerable deference. *Edward J.*
8 *v. Kijakazi*, 2022 WL 4536257, Northern District of New York,
9 September 28, 2022. See you also *Virginia D.F. versus*
10 *Commissioner of Social Security*, 2022 WL 4652361, Northern
11 District of New York, August 19, 2022.

12 The plaintiff testified that she is unable to work
13 due to her mental condition. That's at page 57. The
14 Administrative Law Judge considered in addressing the issue
15 of credibility plaintiff's treatment notes; relatively robust
16 activities of daily living, her ability to cook, clean, do
17 laundry, socialize; the fact that as treatment notes reflect
18 often denied psychiatric or psychological problems; the fact
19 that treatment notes showed improvement with treatment; and
20 plaintiff's desire to reduce her medications. In dealing
21 with her neck pain, the objective evidence was relatively
22 modest. An MRI showed modest findings of a bulging disc.
23 The EMG studies showed no radiculopathy. The carpal tunnel
24 syndrome claim is not supported by testing, with findings of
25 normal grip, strength and so forth.

1 In sum, I find that the Administrative Law Judge's
2 determination and how she exercised her discretion is
3 supported by substantial evidence. The bottom line is that
4 this is a deferential standard of review. I find that the
5 determination is supported by substantial evidence and that
6 the plaintiff has failed to demonstrate to the Court that no
7 reasonable fact-finder could find the facts as the
8 Administrative Law Judge in this case. So I will grant
9 judgment on the pleadings to the defendant and order
10 dismissal of plaintiff's complaint.

11 Thank you both for excellent presentations. I hope
12 you have happy holidays.

*

*

*

C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
Realtime Court Reporter, in and for the United States
District Court for the Northern District of New York,
do hereby certify that pursuant to Section 753, Title 28,
United States Code, that the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.



EILEEN MCDONOUGH, RPR, CRR
Federal Official Court Reporter